IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RAYMOND A. BRENNAN	:	CIVIL ACTION
v.	:	
SPRINGFIELD TOWNSHIP AND SGT. MICHAEL VAUGHAN AND DETECTIVE JAMES DEVANEY	:	No. 97-5217

Decision Under Fed.R.Civ.P. 52(a)

Ludwig, J. **July 7, 1998**

This action having been heard non-jury February 26-27, 1998, the following decision is entered. Fed.R.Civ.P. 52(a). The complaint comprises federal and state constitutional claims resulting from alleged lack of probable cause to arrest, false imprisonment, unlawful post-arrest investigation and unlawful detainment. Jurisdiction is federal question. 42 U.S.C. § 1983 and 28 U.S.C. § 1331.

I.

The following facts are part of a pretrial stipulation:

> On February 1, 1997, plaintiff was employed by RTO East Avalanche Inc. as a salesman. On that day, per the instruction of his employer, he accompanied one Prennis Lee Johnson. Mr. Johnson recommended that they proceed to Springfield Township for the purpose of soliciting potential customers for the employer's product. Mr. Johnson was the driver of an automobile in which the plaintiff was riding as a passenger. Upon arriving at the Sproul Shopping Center the defendant, Sgt. Michael Vaughan stopped both Mr. Johnson and Mr. Brennan and questioned whether they had a Springfield Township Solicitor's License. Upon learning that they did not, Sgt. Vaughan informed them that they were not able to

conduct business in Springfield Township without such a license.

Both Mr. Johnson and Mr. Brennan returned to the vehicle which was being driven by Mr. Johnson. Shortly thereafter, Sgt. Vaughan, upon checking the license plate of the vehicle, determined that it had been stolen, and Sgt. Vaughan called for "back up" after which he and several other police officers stopped the vehicle, placing handcuffs on both Mr. Johnson and the plaintiff, Raymond Brennan, and took them back to the Springfield Township Police Department. Mr. Brennan was transported to the Police Department by Sgt. Vaughan.

During the ride back to the police department the plaintiff, Raymond Brennan, informed Sgt. Vaughan that he was unaware that the vehicle was stolen and that he was instructed by his employer to accompany Mr. Johnson during that day of work.

At the Springfield Township Police Headquarters, the plaintiff was interviewed by the defendant Det. James Devaney, at which time he indicated that he had no knowledge whatsoever that the vehicle was stolen and that he was in the vehicle at the behest of his employer for the purpose of working with Prennis Lee Johnson on that day.

The plaintiff was subsequently arraigned by a District Justice and unable to make bail, spend [sic] four (4) days in Delaware County Prison until bail was posted and he was released.

At a Preliminary Hearing, several weeks later, the plaintiff was approached with an offer to dismiss the charges in consideration of the execution of a Release releasing these defendants from all liability. The plaintiff refused to execute the Release. The charges were nevertheless dismissed. Mr. Johnson entered a negotiated guilty plea on May 12, 1997 for theft by receiving stolen property and was sentenced to time served (2 days) to 23 months.

Det. Devaney admits that after having spoken to both Mr. Brennan and his employer, he tended to believe the plaintiff's account as to why he was in the automobile.

Pretrial stip. at 1-3.

II.

The following facts are found from the evidence received at trial:

1. Before February 1, 1997, which was the first day that they were assigned to work together, plaintiff and Johnson had little contact. They were acquainted having worked out of the same office for approximately one month. After stopping for breakfast, they arrived at Olde Sproul Shopping Center in Springfield Township, Delaware County, before noon. Tr. Feb. 26 at 69, 70, 84. They intended to sell merchandise on the shopping center sidewalk and had taken some items out of the vehicle, which was a station wagon.

2. Sgt. Vaughan's first contact with plaintiff was in the parking lot of the shopping center. He approached the men to inquire whether they had a Township solicitation license. When they said they did not, he informed them that they could not solicit without one. Despite their lack of a license, he did not doubt the legitimacy of their employment. Each produced employee identification and agreed to leave. Tr. Feb. 26 at 3, 4, 8.

3. Sgt. Vaughan engaged the men, both of whom are African-American, in a five to 10 minute "cordial conversation" and observed that plaintiff and Johnson joked together and appeared to be on friendly and familiar terms. Additionally, he watched them reload their wares in the car. Tr. Feb. 26 at 8, 116-118.

4. Sgt. Vaughan "made a mental note" of the vehicle's New Jersey license plate number and ran a check on it. He learned

that it had been reported stolen in Philadelphia "a couple days prior." Sgt. Vaughan called for backup police, who followed the vehicle and with them executed a "felony car stop," with drawn revolvers. He believed the vehicle to have been stolen and that both plaintiff and Johnson were criminally involved. Tr. Feb. 26 at 118-119, 125. 5. Before and during the stop, Sgt. Vaughan followed Springfield Township Police Department's "Laws of Procedure and Arrest." As a member of the police department, Sgt. Vaughan held a 1988 diploma from the Philadelphia Police Academy, and had received two days of "Act 180" recertification training annually. The training, which is mandated by the police department, covers "legal updates and the laws of arrest and ethics," officer safety, and other topics. The law of probable cause is covered periodically in Act 180 training. Tr. Feb. 26 at 114-115, 124.

6. During the stop, Sgt. Vaughan, the only officer to issued commands, ordered Johnson out of the vehicle first, and he was handcuffed by another officer. As he left the vehicle, Johnson began "gesturing" and "saying something" to Sgt. Vaughan. After Johnson was handcuffed, Sgt. Vaughan ordered plaintiff to get out of the vehicle and had him handcuffed. Tr. Feb. 26 at 120-124. Johnson told Sgt. Vaughan that plaintiff had nothing to do with the theft of the vehicle.[1] Id. at 43.

[1] Sgt. Vaughan testified that he did not remember any specific statements that Johnson made to him during the arrest. Tr. Feb. 26 at 121.

7. Plaintiff and Johnson were subsequently charged with unauthorized use of an automobile, 18 Pa.C.S.A. § 3928 and receiving stolen property, 18 Pa.C.S.A. § 3925.

8. Sgt. Vaughan transported plaintiff back to the police station for processing. Plaintiff was cooperative with the arresting officers. He informed Sgt. Vaughan that he did not know Johnson well and he did not know the car had been stolen. Sgt. Vaughan told plaintiff "something to the effect of ... not to worry about it, it will all be straightened out." Tr. Feb. 26 at 11-12, 125-126.

9. After returning to the station, Sgt. Vaughan completed an incident report. Exh. D-5. When he inspected the vehicle, he removed a broken or "split" key from the ignition. While in the ignition, it did not appear to be broken. Tr. Feb. 26 at 129-130.

10. After plaintiff was placed in a cell at the police department, Sgt. Vaughan permitted him to call his 11-year old daughter whom he had left with a neighbor.[2] Tr. Feb. 26 at 23, 127.

11. Before leaving his shift for the day, Sgt. Vaughan spoke with Detective Devaney, who took over responsibility for the case, and advised him as to the facts of the arrest. Det. Devaney took the men's fingerprints and photographs. He interviewed

[2] Plaintiff lived with his minor daughter. While plaintiff was in custody, his sister and mother took care of his daughter. Tr. Feb. 26 at 69, 76-77.

plaintiff who told him that he did not know Johnson, that they only worked together, and that he was concerned about his daughter who was home alone. Tr. Feb. 26 at 132, 144, 145.

12. Det. Devaney executed an affidavit of probable cause for the criminal complaint based on his conversation with Sgt. Vaughan and the incident report. Id. at 145, 147. See exhs. D-1, D-2.

13. Later that evening, Det. Devaney and another officer transported the arrestees to their arraignment at Folcroft. Devaney recommended a $1,500/10 percent bail to the constable because he found plaintiff to be a "very likable individual" whose only concern was for his daughter, and who would not pose any flight risk. Bail was ultimately set at $5,000, which plaintiff was unable to post. Tr. Feb. 26 at 76-77, 148-149.

14. After he returned to the police station, Det. Devaney received a phone call from a woman who said she was plaintiff's employer.[3] Tr. Feb. 26 at 75. The employer told him that plaintiff had been assigned to work with Johnson and that, in her opinion, plaintiff would not have known the vehicle had been stolen. Tr. Feb. 26 at 149-150. Det. Devaney had no reason to doubt the veracity of these statements. Det. Devaney also tended to believe plaintiff's explanation after speaking with his employer

[3] Plaintiff's testimony was that he told Det. Devaney his employer's name and phone number during their initial interview. Devaney told plaintiff he would call to verify the information, and reported that he had done so before plaintiff was taken to the arraignment around 5 p.m. that evening. Tr. Feb. 26 at 75.

because the two stories coincided. Id. at 20, 26-27.

15. After the arraignment, plaintiff was transported to Delaware County Prison where he spent three days.[4] Upon his arrival, plaintiff attempted to place another call to his employer regarding bail. The line was too long and plaintiff did not place the call. While incarcerated, plaintiff was permitted to leave his cell only once for a medical check. All meals were given to him in his cell and he made no other calls. He was released on February 4, 1997 when bail was paid for by his employer. Tr. Feb. 26 at 77 -79.

16. Following his release on bail, plaintiff missed a few days of work.[5] During that time, plaintiff explained the situation to his daughter - which was difficult as plaintiff had "always taught her how to respect authorities." Upon his return to work, plaintiff became the subject of office jokes regarding his incarceration. Id. at 79.

17. A preliminary hearing was first set for February 6, 1997 but later continued until March 6, 1997. During this time, plaintiff was represented by a court-appointed attorney. Tr. Feb. 26 at 94.

18. Det. Devaney and Sgt. Vaughan discussed the employer's phone call on one occasion sometime after February 1,

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[4] Plaintiff was transported to prison on the evening of February 1, 1997 and was released on February 4, 1997.

[5] The number of days was not specified. See Tr. Feb. 26 at 79.

1997 - the date of plaintiff's arrest and arraignment - and before March 6, 1997, the date of the preliminary hearing. In that conversation, both agreed that plaintiff's story was plausible and that "there was a possibility that [plaintiff] might have been at the wrong place at the wrong time, a possibility." Det. Devaney could not pinpoint the date of the conversation. Tr. Feb. 26 at 28-29.

19. The charges against plaintiff were withdrawn on March 6, 1997 immediately before the hearing. This was the first time Det. Devaney spoke with "everyone involved," including Sgt. Vaughan, and Det. Devaney's supervisor and lieutenant. Tr. Feb. 26 at 28. Before the charges were withdrawn, plaintiff's attorney showed him a "general release" given to Det. Devaney by his lieutenant for plaintiff's signature. Although plaintiff refused to sign, the charges were withdrawn. Id. at 34-37, 80.

20. Until the instant trial, Det. Devaney was unaware of Pennsylvania Rule of Criminal Procedure 151, "withdrawal of prosecution before issuing authority." He had not received any instruction on the subject from Springfield Township Police Department or otherwise. Tr. Feb. 26 at 32-34.

III.

The issues presented in this action are: whether Sgt. Vaughan lacked probable cause to arrest plaintiff; whether Det. Devaney properly completed a post-arrest investigation; whether plaintiff was unlawfully detained or falsely imprisoned; whether

Springfield Township failed to train its police officers and detectives either in the laws of arrest of passengers in stolen vehicles, or in the procedure to withdraw criminal charges; and whether either Sgt. Vaughan or Det. Devaney is entitled to qualified immunity.

A. Arrest of Plaintiff - Probable Cause

Probable cause to arrest "exists when the facts and circumstances within the arresting officer's knowledge are sufficient in themselves to warrant a reasonable person to believe that an offense had been committed by the person to be arrested." Orsatti v. New Jersey State Police, 71 F.3d 480, 483 (3d Cir. 1995) (citing United States v. Cruz, 910 F.2d 1072, 1076 (3d Cir. 1990)). Further, "[a] court must look at the 'totality of the circumstances' and use a 'common sense' approach to the issue of probable cause." Sharrar v. Felsing, 128 F.3d 810, 818 (3d Cir. 1997) (citation omitted).

The offenses for which plaintiff was arrested are unauthorized use of automobiles and other vehicles, 18 Pa.C.S.A. § 3928, and receiving stolen property, 18 Pa.C.S.A. § 3925. Both statutes require guilty knowledge. See Commonwealth v. Carson, 405 Pa. Super. 492, 496-497, 592 A.2d 1318, 1321 (1991). Guilty knowledge may not be presumed from unexplained possession of recently stolen property. Commonwealth v. Owens, 441 Pa. 318, 324, 271 A.2d 230, 233 (1970). Instead, unexplained possession may give rise only to a permissive inference of guilty knowledge.

Commonwealth v. Turner, 456 Pa. 116, 120-21, 317 A.2d 298, 300 (1974).[6] Moreover, "mere possession of stolen property is insufficient to permit an inference of guilty knowledge; there must be additional evidence, circumstantial or direct, which would indicate that the defendant knew or had reason to know that the property was stolen." Commonwealth v. Matthews, 429 Pa. Super. 291, 294-295, 632 A.2d 570, 572 (1993) (citation omitted). Even when the presumption had vitality, some 35 years ago, it was triggered not by possession itself but by "unexplained" possession.

Caselaw instructs that the permissive inference requires possession plus. One example - upon stopping a car known to be stolen, the arresting officer observed the passenger flee the scene. See In re interest of Scott, 388 Pa. Super. 550, 555, 566 A.2d 266, 268 (1989); Carson, 405 Pa. Super. at 498 (evidence of flight corroborates the inference of guilty knowledge). Another -

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[6] In Turner, the Pennsylvania Supreme Court discussed at length the increasing "disutility" of the historically accepted presumption of guilty knowledge upon unexplained possession of recently stolen property. It stated: "The advent of densely populated communities, revolutionary advances in communication and transportation, the increased mobility which produced a more transient pattern of living for large segments of our society, and the myriad of other changes in the nature and character of our society have combined to create the need to redefine the term 'recent possession' in an attempt to preserve its rational connection to the identity of the thief.... As a result of these developments, we have moved away from the generally understood meaning of the words Recent and Possession and developed a term of art which represents a judgment that the factual circumstances in a given case surrounding the possession justify the conclusion that the possessor is in fact the thief. Because each case is dependent upon the peculiar circumstances involved, it is difficult to perceive how earlier precedent can serve any meaningful purpose." Commonwealth v. Turner, 456 Pa. at 121-122.

the arresting officer, on patrol in the neighborhood in which he grew up, noticed two non-residents driving away at 4 a.m. in a car that he believed belonged to a local homeowner. Commonwealth v. Bridgeman, 310 Pa. Super. 441, 448, 456 A.2d 1017, 1020 (1983). In these situations, the circumstances known to the arresting officers at the time of the arrest - flight, or other suspicious conduct - affirmatively suggested guilty knowledge attributable to passengers in a stolen car.

Here, the evidence of plaintiff's guilty knowledge, or mens rea, is inconsiderable, if not tenuous. The conduct observed by Sgt. Vaughan - plaintiff's occupancy of the vehicle, interaction with the driver, and joint access to the merchandise - was consistent with two sidewalk vendors working together. On his first encounter with them, Sgt. Vaughan did not question the men's employment or purpose for being at the shopping center. Plaintiff had explained his reason for being in the car, and Officer Vaughan apparently believed him. Nonetheless, the officer decided he had probable cause to believe that plaintiff had guilty knowledge based solely on the report that the vehicle had been stolen.[7] On a common-sense level, see Sharrar, 128 F.3d at 818, it is doubtful that the facts and circumstances within Sgt. Vaughan's knowledge

[7] There was no evidence that plaintiff participated in "acquiring possession, control, or title" or "operating" the car, 18 Pa.C.S.A. §§ 3925(b), 3928(a); nor was there evidence of "joint or constructive possession," see Scott, 338 Pa. Super. at 553-554 (to show joint or constructive possession necessary to implicate non-driver in unauthorized use of a vehicle, must be some evidence that passenger exercised "conscious dominion or control" over the vehicle, or that the occupants were acting "in concert").

were sufficient to raise more than a suspicion as to plaintiff's guilt and the need for investigation.[8] See Orsatti, 71 F.3d at 483. At that point, probable cause did not exist to arrest plaintiff, but only to stop and detain him for questioning.[9] See Terry v. Ohio, 392 U.S. 1, 22, 88 S. Ct. 1868, 1880, 20 L. Ed.2d 889 (1968).

Defendants' position on probable cause to arrest a passenger, such as plaintiff, may result from a misapprehension of law. The testimony of both Sgt. Vaughan and defendants' expert witness, a police instructor, did not distinguish between guilty knowledge and guilty conduct. They defined the elements of receiving stolen property and unauthorized use of a vehicle in terms of possession - consistent with the law that predated Owens

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[8] Defendants also point to the broken key as evidence of guilty knowledge and to the amount of time spent in the car together during which plaintiff could have learned from Johnson that the car was stolen. The "key argument" is unpersuasive as defendant's expert conceded that while in the ignition, the key did not appear to be broken. There was no other evidence that the car had been tampered with. Cf. Carson, 405 Pa. Super. at 498-99 (broken vent window on passenger side and broken steering column). Similarly, the "time together argument" is also unconvincing - whether a driver would - or would definitely not - divulge to a co-employee the vehicle's unlawful status would depend on the employees' relationship, which here, as far as the arresting officer was concerned, was little more than conjectural.

[9] The complaint also alleges state constitutional violations. The tests for determining probable cause are "essentially the same under the federal and state constitutions." Commonwealth v. Gayle, 449 Pa. Super. 247, 673 A.2d 927, 931 n.9 (1996) (citing Commonwealth v. Leninsky, 360 Pa. Super. 49, 53, 519 A.2d 984, 986 (1986) (reasonableness standard is the essence of both federal and state constitutional protections against unlawful seizures)).

and Turner and the presumption of the possessor's mens rea.[10] When questioned, they seemed almost oblivious to the modern rule that guilty knowledge must be supported by some evidence "to indicate that defendant knew or had reason to know that the property was stolen," see Matthews, 429 Pa. Super. at 294-295 - such as the passenger's flight to avoid arrest.[11] In this case, the passenger's explanation of his presence and activity was believed by the officer immediately prior to ascertaining that the vehicle was stolen. No decision has been found in which probable cause was based solely on a passenger's occupancy in a stolen vehicle. If anything, given the circumstances here, the officer had reason to believe that the passenger did not know the vehicle had been stolen.

B. Post-Arrest - Investigation and Imprisonment

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[10] Indeed, defendants' expert referred to Commonwealth v. Romero, 449 Pa. Super. 194, 194, 673 A.2d 374, 377 (1996), as an example of the necessary "inference" required to support probable cause to arrest. See tr. Feb. 27 at 5. However, in contrast to the statutes at issue here, guilty knowledge was not an element of the statute in Romero, which involved a "strict liability" offense. See 18 Pa.C.S.A. § 6108 ("No person shall carry a firearm...upon the public streets...unless (1) such person is licensed to carry a firearm; or (2) such person is exempt from licensing...."). Romero is hardly a basis for mens rea analysis.

[11] See tr. Feb. 27 at 15 (Joseph Stine testifying on cross-examination that a passenger in a stolen car raises a "probability" of criminal activity), 30-32; tr. Feb. 26 at 12-13 (Sgt. Vaughan testifying to observing interaction between plaintiff and driver that led him to believe plaintiff was involved in criminal activity), id. at 17 (Sgt. Vaughan not identifying any knowledge requirement when asked about the elements of unauthorized use).

After being transported to the prison the evening of February 1, 1997, plaintiff was incarcerated for the next three days in Delaware County Prison before released on bail. The post-arrest processing and investigation were conducted by Det. Devaney. Five weeks after the arrest, at the preliminary hearing, the charges were withdrawn. Plaintiff contends that the incarceration constituted false imprisonment and resulted from improper police work by both Sgt. Vaughan and Det. Devaney. See Plaintiff's proposed conclusions of law at ¶¶ 4-5.

"[W]here police lack probable cause to make an arrest, the arrestee has a claim under § 1983 for false imprisonment based on a detention pursuant to that arrest." Groman v. Township of Manalapan, 47 F.3d 628, 636 (3d Cir. 1995) (citing Baker v. McCollan, 443 U.S. 137, 142, 99 S. Ct. 2689, 2693, 61 L. Ed.2d 433 (1979)). Here, the lack of probable cause supports a claim of false imprisonment against the arresting officer. Recently, the District Court of New Jersey found a constitutional violation when a post-arrest investigation was conducted with "deliberate or reckless intent to falsely imprison." Green v. City of Patterson, 971 F. Supp. 891, 908 (D.N.J. 1997).

Plaintiff argues that the post-arrest investigation was conducted with deliberate or reckless indifference to his civil rights in two ways. The first was that Det. Devaney ignored the exculpatory evidence received in the telephone call with plaintiff's employer - which corresponded with and verified plaintiff's statement to the police. Plaintiff's proposed findings

of fact at ¶ 10. The second was that Det. Devaney did not attempt to withdraw the charges until the preliminary hearing despite a procedure that enabled him to do so, Pa.R.Crim.P. 151. Tr. Feb. 26 at 32-33.

Defendants' counter-argument is that the information received from the employer was not necessarily "exculpatory" because the employer could not speak to plaintiff's knowledge concerning the stolen car. Defendants' post-trial brief at 7-9. Moreover, the detective was unaware of Pa.R.Crim.P. 151, and under the Rule then in effect only an attorney for the Commonwealth could have withdrawn the charges - not a police official.[12] Defendants' post-trial brief at 12-13.

Both of defendants' positions must be rejected. At the time that he talked with the employer, Det. Devaney had all of the information upon which he eventually relied.[13] The sole evidence for his concluding that plaintiff was probably "in the wrong place at the wrong time" was the employer's phone call. His testimony was that after speaking to the employer he "tended to believe" plaintiff's story, and that he found plaintiff to be "likable." See supra, section I, ¶ 14. Furthermore, regardless of Rule 151, it is not clear that the detective was, as he testified, unaware of any procedure for the withdrawal of charges. Because he testified that the "first chance" he had to speak with everyone involved was

[12] Plaintiff concedes that the copy of the Rule shown to Det. Devaney at trial was not in effect at the relevant time. See plaintiff's reply brief at 15.

[13] The exact time of this call is disputed.

at the preliminary hearing, it can be inferred that Det. Devaney simply waited until then to do so.

On these facts, no justification has been offered for the three plus days of imprisonment and the more than a month's delay in withdrawing the charges. Given the detective's own testimony, he possessed the necessary information to conclude that plaintiff was probably being held mistakenly. His failure to act promptly contributed to the unlawful detention and false imprisonment of plaintiff. That conduct constituted recklessness, and if not deliberate indifference, to plaintiff's civil rights. See Green, 971 F. Supp. at 908.

C. Municipal Liability

A municipality cannot be held liable for the actions of its employees on a respondeat superior theory; plaintiff must demonstrate that the municipality itself caused the constitutional violation through a policy or custom. City of Canton v. Harris, 489 U.S. 378, 385, 109 S. Ct. 1197, 1203, 103 L. Ed.2d 412 (1989) (citing Monell v. New York City Dept. of Social Services, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed.2d 611 (1978)). A municipality's failure to train its employees in the administration of a policy may form the basis for a § 1983 claim. See City of Canton, 489 U.S. at 387. However, "the inadequacy of police training may serve as the basis for § 1983 liability only where the failure to train amounts to deliberate indifference to the rights of persons with whom the police came into contact." Id.

Plaintiff argued that one unlawful policy existed in Springfield Township and also presented two failures to train theories - one relating to the laws of arrest of passengers in stolen vehicles, and the other to Pennsylvania Rule of Criminal Procedure 151. While there was some evidence to support each of these contentions, it was not sufficient to sustain plaintiff's burden of proof.

Plaintiff offered the testimony of Sgt. Vaughan that on two prior occasions, when confronted with a passenger in a stolen vehicle, he arrested the passenger as well as the driver.[14] Tr. Feb. 26 at 9-11. There was no other evidence, besides plaintiff's arrest, to establish such a practice.[15] See Groman, 47 F.3d at 637 ("[A] single incident of unconstitutional activity is not sufficient to impose liability under Monell, unless proof of the incident includes proof that it was caused by an existing, unconstitutional municipal policy, which policy can be attributed to a municipal policymaker") (citing Oklahoma City v. Tuttle, 471 U.S. 808, 823-824, 105 S. Ct. 2427, 2436-2437, 85 L. Ed.2d. 791

[14] Plaintiff asserted that the officer, in his deposition, admitted to such a policy; defendants dispute the meaning of the testimony. See plaintiff's reply to defendants' post-trial brief at 13; defendants' reply to plaintiff's reply at 6 (transcribing deposition testimony and arguing plaintiff's brief mischaracterized it). From that transcription it is evident that the witness said: "I wouldn't say it was a set policy... However, from my prior experience the passenger was charged, yes." Id.

[15] For example, there was no testimony from any policy or decision maker on the issue; nor was there testimony from any officer other than Vaughan.

(1985)). The adduced evidence fell short of proving a policy or custom.

The same applies to inadequate training. Regarding a municipality's constitutional burden to train, our Court of Appeals has said -

> City of Canton teaches that municipal liability for failure to train cannot be predicated solely on a showing that the City's employees could have been better trained or that additional training was available that would have reduced the risk of overall injury. A § 1983 plaintiff pressing a claim of this kind must identify a failure to provide specific training that has a causal nexus with his or her injury and must demonstrate that the failure to provide that specific training can reasonably be said to reflect a deliberate indifference to whether constitutional deprivations of the kind alleged occur.

Colburn v. Upper Darby Township, 946 F.2d 1017, 1029-1030 (3d Cir. 1991). Moreover, "a city has no constitutional obligation to formulate a policy for, and train officers in, every situation which might conceivably arise in connection with an arrest. The fact that no policy existed certainly does not support the inference that by this omission the city condoned the unconstitutional practice." Klemka v. Nichols 943 F. Supp. 470, 480 (M.D. Pa. 1996). Therefore, where a lack of a policy or training is alleged to have been the unconstitutional practice, causation is an important element of the inquiry.

Here, Det. Devaney admitted having received no training from the Township as to specific procedures for arresting passengers in stolen vehicles or as to Rule 151. Plaintiff maintains that specific training in these areas was constitutionally required, see Tr. Feb. 26 at 24-25, citing Clipper

v. Takoma Park, 76 F.2d 17 (4th Cir. 1989). In Clipper, the Court of Appeals for the Fourth Circuit sustained the jury's finding that plaintiff's arrest had been made without probable cause. The arresting officer testified that he "had received no training materials giving typical examples of arrests properly based on probable cause." Clipper, 76 F.2d at 20. Here, the police officers did receive training in probable cause to arrest, albeit the specific training in probable cause to arrest passengers in stolen vehicles may in part have been incorrect. However, distancing this case from Clipper, the Township has not shown deliberate indifference to the need for training to avoid constitutional violations.

D. Qualified Immunity

The test: "whether a reasonable officer could have believed that his or her conduct was lawful, in light of the clearly established law and the information in the officer's possession.... The qualified immunity standard 'gives ample room for mistaken judgments' by protecting 'all but the plainly incompetent or those who knowingly violate the law.'" Sharrar, 128 F.3d at 826 (citations omitted). In order to defeat a claim of qualified immunity, a plaintiff must show the violation of a "clearly established" constitutional right, and that the officer's belief in the lawfulness of his or her conduct with respect to that right is objectively unreasonable. Id. The standard for determining "reasonableness" under this inquiry is whether a reasonably well-

trained officer could have reached the same conclusion. Malley v. Briggs, 475 U.S. 335, 341, 106 S. Ct. 1092, 1096, 89 L. Ed.2d 271 (1986); Orsatti, 71 F.3d at 483. Where the material facts are not in dispute, these inquiries are both questions of law. Sharrar, 128 F.3d at 828 (referring to the Supreme Court's discussion in Hunter v. Bryant, 502 U.S. 224, 228, 112 S. Ct. 534, 536-37, 116 L. Ed.2d 589 (1991)).

Here, plaintiff did prove violations of clearly established constitutional rights - the Fourth and Fifth Amendments (arrest without probable cause and unlawful detention/reckless post-arrest investigation). Given the facts and circumstances, neither Sgt. Vaughan nor Det. Devaney is entitled to qualified immunity. Under the analysis set forth in section III-A, because of the lack of evidence suggesting guilty knowledge, no reasonable officer in Sgt. Vaughan's position should have concluded that probable cause to arrest plaintiff existed. Moreover, Det. Devaney unjustifiably and recklessly delayed initiation of withdrawal of the charges against plaintiff, although he questioned from the day of plaintiff's arrest whether he was guilty and eventually recommended withdrawal without any new information. This is objectively unreasonable behavior.

E. Damages

Plaintiff's complaint requests compensatory and punitive damages, fees and costs. "[W]hen a § 1983 plaintiff seek[s] damages for violations of constitutional rights, the level of

damages is ordinarily determined according to principles derived from the common law of torts." Memphis Community School District v. Stachura, 477 U.S. 299, 306, 106 S. Ct. 2573, 2542, 91 L. Ed.2d 249 (1986). Compensatory damages may include out-of-pocket loss and material harm as well as injury to reputation, mental anguish, and suffering. Id., 477 U.S. at 307, 106 S. Ct. at 2543 (citation omitted). Actual injury must be proven in order to recover for emotional damages resulting from a constitutional violation. Bolden v. SEPTA, 21 F.3d 29, 34 (3d Cir. 1994). Punitive damages are awardable if individual defendants have acted with callous or reckless disregard of, or indifference to, plaintiff's civil rights. Keenan v. City of Philadelphia, 983 F.2d 459, 469-470 (3d Cir. 1992).

Here, following his arrest, plaintiff spent about four days in custody - a portion of a day at the Springfield Township Police headquarters and three nights at the Delaware County Prison. While incarcerated, plaintiff was confined to a cell with no access to television, books or radio. Tr. Feb. 26 at 78. As noted, his 11-year old daughter was left in the care of other relatives. These circumstances greatly upset plaintiff, and necessitated his taking off several days from work upon release.[16] Additionally,

[16] Inferentially, although not explicitly stated, it appears that plaintiff had no prior criminal history. The police must have checked his record - and their testimony about him was positive. Moreover, as he testified, "I...had to explain to my daughter what happened. I always taught her how to respect the authorities and all that, so it was kind of hard for me to really explain it to her." Tr. Feb. 26 at 79.

plaintiff lost a few days' wages, and when he returned to work was the subject of ridicule by some of his co-employees. Tr. Feb. 26 at 79.

Compensatory damages should be fair, reasonable, and adequate and, in a case of this type, should compensate the injured party for the harm caused and actually sustained. Here, although no amount of money may be sufficient to make up for plaintiff's imprisonment, a fair, albeit conservative award, is fixed at $10,000.

Punitive damages require malice or ill will, an evil intent or recklessness of consequences. The conduct involved must be outrageous in character, and the award of such damages is discretionary. The evidence produced does not justify punitive damages. The police officers appear to have believed that they were doing their job, and there was no evidence of overt hostility or personal excessiveness on their part.

IV.

Conclusions of Law

1. This Court has jurisdiction over the subject matter of this action and over the parties.

2. Plaintiff sustained his burden of showing that Sgt. Vaughan lacked probable cause to arrest him on February 1, 1997 and also that Det. Devaney acted recklessly in the post-arrest investigation.

3. The conduct of Sgt. Vaughan and Det. Devaney and of each of them was a substantial factor in bringing about plaintiff's detention and incarceration.

4. Plaintiff did not sustain his burden of proving that Springfield Township acted under a policy or custom or with deliberate indifference to his constitutional rights either in its training in the laws of arrest of passengers in stolen vehicles or instruction of Pennsylvania Rule of Criminal Procedure 151.

5. Neither individual defendant is entitled to qualified immunity.

6. Plaintiff is entitled to compensatory damages in the amount of $10,000.

7. Plaintiff is not entitled to punitive damages.

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Edmund V. Ludwig, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RAYMOND A. BRENNAN	:	CIVIL ACTION
v.	:	
SPRINGFIELD TOWNSHIP AND SGT. MICHAEL VAUGHAN AND DETECTIVE JAMES DEVANEY	:	No. 97-5217

O R D E R

And now, this 7th day of July, 1998, upon hearing, judgment is entered in favor of plaintiff Raymond A. Brennan, and against defendants Sgt. Michael Vaughan and Detective James Devaney in the sum of $10,000, together with interest, costs, and attorney's fees and expenses.

Judgment is entered in favor of defendant Springfield Township and against plaintiff Raymond A. Brennan.

See Decision entered this date.

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Edmund V. Ludwig, J.